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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,088	04/15/2004	David Sperduti	H28240	7165

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EXAMINER

ADE, OGER GARCIA

ART UNIT

PAPER NUMBER

3687

NOTIFICATION DATE

DELIVERY MODE

05/10/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/825,088	<b>Applicant(s)</b> SPERDUTI ET AL.	
	<b>Examiner</b> GARCIA ADE	<b>Art Unit</b> 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 21-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 21-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>01/28/2010</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

1. Applicants' "Amendment/Request for Reconsideration After Non-Final" filed on **01.28.2010** has been considered.

Therefore, **claims 1-8, and 21-39** remain pending in this application.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-7** are rejected under 35 U.S.C. 102(e) as being anticipated by Pond et al. [2004/0030601].

**As per claim 1**, Pond teaches a terminal for conducting a financial transaction [see at least paragraph the abstract], comprising:

- a radio frequency reader, said reader configured to read a radio frequency payment token presented as a payment medium for said ad libitum financial transaction

[see at least paragraph 5], said radio frequency reader devoid of a capability to simulate a reader employing reader technology other than radio frequency [see at least paragraphs 14 and 22]; and an output device for confirming that a transaction is being performed [see at least paragraph 65, and paragraph 150].

**As per claim 2**, Pond discloses a transaction register [see at least paragraph 5].

**As per claim 3**, Pond discloses wherein said transaction register is operated by a salesperson [as illustrated in figure 8 (e.g. block 860)].

**As per claim 4**, Pond discloses a printer [see at least paragraph 78 (e.g. printer 392)].

**As per claim 5**, Pond discloses wherein said printer is configured to print a transaction receipt [see at least paragraph 78 (e.g. printer 392)].

**As per claim 6**, Pond discloses an imaging device [see at least paragraph 154 (e.g. image of additional items)].

**As per claim 7**, [pond discloses wherein the imaging device comprises a bar code reader [see at least paragraph 22].

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 8, 21-25, and 27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Pond et al. in view of Silverstein et al. [US 2004/0093281].

**As per claims 8 and 27**, Pond discloses a terminal for conducting a financial transaction [see at least paragraph 5], comprising: a radio frequency reader, said reader configured to read a selected one of a plurality of payment tokens employing dissimilar data formats, and to provide data corresponding to an elicited response from said selected one of a plurality of payment tokens employing dissimilar data formats [see at least paragraphs 14, 22, 89, and 151];

- a memory for recording data and a machine-readable program, said memory in communication with said radio frequency reader [see at least paragraph 17];

- a processor module in communication with said memory and said radio frequency reader, said processor module configured by said machine-readable program to attempt to decode said data corresponding to said elicited response [see at least paragraph 25].

Pond substantially discloses all elements per claimed invention as explained above. Pond does not explicitly disclose said communication module configured to communicate bidirectionally with a remote computer-based apparatus; and an output device for confirming a transaction register. However, Silverstein discloses in figure 17b a remote purchasing system incorporating RFID technology, and figure 1 of Silverstein also provides a graphic overview of the system architecture of an exemplary remote ***purchasing system 100*** [see paragraph 71]; and an output device for confirming a transaction register [see at least paragraph 233 (e.g. ***input/output*** access to the invention may comprise appropriate hardware and software (e.g., personal and/or mainframe computers provisioned with Internet wide area network communications hardware and software))].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teaching of Silverstein to the teaching of Pond in order to provide additional benefits, e.g., freeing consumers from carrying cash into venues, reducing transaction fees and financial risk for venues, and increasing branding opportunities for manufacturers, distributors and third-party marketers [see summary of the invention].

**As per claim 21**, Pond discloses wherein the terminal is configured to read a payment token employing a data format particular to a specific commercial entry [see at least paragraphs 14, 22, 89, and 151].

**As per claim 22**, Staib discloses wherein the terminal is configured to read a data format employing a data format particular to a specific retailer [see at least paragraphs 14, 22, 89, and 151].

**As per claim 23**, Staib discloses wherein the terminal is configured to read a payment token provided by a key fob [see at least paragraph 23].

**As per claim 24**, Pond an image reader and decoder for reading and decoding bar codes [see at least paragraph 22].

**As per claim 25**, Pond discloses capturing an area electronic image representation [see at least paragraph 154].

7. **Claim 26** are rejected under 35 U.S.C. 103(a) as being unpatentable over Pond et al. in view of Metzger [US 2004/0186760].

**As per claim 26**, Pond does not explicitly disclose a signature capture pad. However, Metzger teaches a signature capture pad [see at least paragraph 30 (e.g. *authorization signature*), and paragraph 35 (e.g. *A signature may be captured for transactions*)].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to incorporate the teaching of Metzger to the teaching of Pond in order to provide a portable device for completing remote point of sale (POS) transactions [see summary of the invention, paragraph 11].

**Claims 28-32** recite similar limitations presented in **claims 1-8, and 21-27** above. Therefore **claims 28-32** are rejected under the same rationale and same basis using the previously cited references: Pond, Silverstein, and Metzger.

**Claims 33-39** recite similar limitations presented in **claims 1-8, and 21-27** above. Therefore **claims 33-39** are rejected under the same rationale and same basis using the previously cited references: Pond, Silverstein, and Metzger.

### ***Response to Arguments***

8. Applicants' arguments with respect to claims 1-8, and 21-39 have been considered but are moot in view of the new ground(s) of rejection.
9. The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately. The prior art differs from the claim by the substitution of some components. The substituted components were known. The technical ability existed to substitute the components as claimed and the result of the substitution is predictable.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GARCIA ADE whose telephone number is (571)272-5586. The examiner can normally be reached on M-F 8:30AM - 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew S. Gart can be reached on 571.272.3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a SPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Garcia Ade  
Examiner  
Art Unit 3687

/Matthew S Gart/

Supervisory Patent Examiner, Art Unit 3687